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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation  
Against:

CHARLENE ANN CHARTIER  
21551 Brookhurst Street, #23  
Huntington Beach, CA 92646

Respiratory Care Practitioner  
License No. 9731

Respondent.

Case No. R-1997

OAH No. L-2006020563

**FIRST AMENDED  
A C C U S A T I O N**

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this First Amended Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about September 25, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License No. 9731 to CHARLENE ANN CHARTIER (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2007, unless renewed.

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**JURISDICTION**

3. This First Amended Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3750 of the Code states, in pertinent part:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

" . . .

"(f) Negligence in his or her practice as a respiratory care practitioner.

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

" . . .

"(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

"(k) Falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible entries in any patient, hospital, or other record.

" . . . ."

7. Section 3750.5 of the Code states, in pertinent part:

"In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or license holder who has done any of the following:

..

“(b) Used any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2 (commencing with section 4015) of Chapter 9.

“ ”

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8. California Code of Regulations, title 16, section 1399.370, states, in pertinent part:

“For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

“(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Act. . . .”

## COST RECOVERY

9. Section 3753.5, subdivision (a) of the Code states, in pertinent part:

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case. . . ."

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1                   10.     Section 3753.7 of the Code states:

2                   "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include  
3 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,  
4 and service fees."

5                   11.     Section 3753.1 of the Code states, in pertinent part:

6                   "(a) An administrative disciplinary decision imposing terms of probation may include,  
7 among other things, a requirement that the licensee-probationer pay the monetary costs associated with  
8 monitoring the probation."

9                   **FIRST CAUSE FOR DISCIPLINE**

10                                   **(Negligence)**

11                   12.     Respondent is subject to disciplinary action under Code sections 3750(f)  
12 and 3750(g), in that she was negligent in her care and treatment of patient #11932745. The  
13 circumstances are as follows:

14                               A.     On or about July 1, 2004, patient #11932745<sup>1</sup> ("the patient")  
15 was dying of liver cancer. At or about 11:20 a.m. this same date, the attending  
16 registered nurse ("RN") checked the patient's vital signs which she noted as  
17 follows: Blood Pressure was 34/15; Respiratory Rate was 8 per minute; and Heart  
18 Rate was 34 per minute. These are indications of the patient's imminent death  
19 which required the RN to monitor the patient's condition approximately every five  
20 minutes.

21                               B.     At 11:50 a.m. on this same date, when the RN was not in  
22 the patient's room, Respondent provided respiratory treatment to the patient by  
23 removing the existing nasal cannula and applying an Aerosol mask. Respondent  
24 failed to obtain the patient's vital signs, failed to listen to his breathing sounds with  
25 a stethoscope, and failed to observe the patient's respiratory status before providing  
26 the breathing treatment. In spite of these failures, Respondent charted the patient's

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28                   1. #11932745 is patient's medical record number.

1       vitals as follows: Heart Rate was 122 per minute, Respiratory Rate was 20, and  
2       Pulse Oximetry Saturation<sup>2</sup> was 96%. These vital signs recordings are false, are  
3       inconsistent with the patient's declining condition and are inconsistent with the  
4       RN's vitals taken earlier at approximately 11:20 a.m.<sup>3</sup>

5               C.       Between approximately 11:45 a.m. and 11:50 a.m., the RN  
6       returned to the patient's room and noted the patient wearing the Aerosol mask but  
7       was not breathing. The RN called for the charge nurse to confirm that the patient  
8       had expired. The charge nurse assessed the patient between about 11:50 a.m. and  
9       11:55 a.m., and by use of her stethoscope confirmed the patient was not breathing  
10      and was dead. The charge nurse left the room to call Dr. H. to examine the patient  
11      to confirm the patient's death. Some time after the charge nurse left the patient's  
12      room, Respondent entered the room and removed the Aerosol mask. Respondent  
13      failed to monitor the patient after removing the Aerosol mask. Respondent also  
14      failed to notify anyone about the patient's condition, and failed to notify anyone  
15      that the patient had stopped breathing and/or had expired. Dr. H. pronounced the  
16      patient dead at 12:00 p.m.

17               13. Respondent's respiratory license is subject to disciplinary action for negligence  
18      in violation of Code sections 3750(g) and 3750(f) in that:

19               A.       The allegations in paragraph 12 are here realleged as though  
20      fully set forth.

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25               2. Normal readings are 94% to 100%.

26               3. In a written declaration to the Board, Respondent stated the patient's vitals were "difficult  
27      to obtain" due to the patient's hypotension (low blood pressure). Respondent further stated that  
28      due to the patient's condition, the pulse oximeter could not give her accurate readings which  
    required her to take a manual heart rate via the carotid artery.

1 B. At approximately 11:50 a.m., on July 1, 2004, Respondent  
2 provided breathing treatment to patient #11932745 without obtaining the patient's  
3 vital signs, without listening to the patient's breathing sounds and without  
4 observing the patient's respiratory status.

5 C. In applying an Aerosol mask to patient #11932745,  
6 Respondent provided breathing treatment to a patient who was either dead or nearly  
7 dead.

8 D. Respondent created a false medical record on patient  
9 #11932745 by falsifying vital signs recordings in the patient's chart.

10 E. At approximately 11:55 a.m. on July 1, 2004, Respondent  
11 removed the Aerosol mask on patient #11932745 but failed to inform the RN or the  
12 charge nurse or other appropriate staff that the patient was not breathing or was  
13 dead.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Dishonest Act)**

16 14. Respondent is further subject to disciplinary action under Code sections  
17 3750(g) and 3750(j), in that she engaged in dishonesty by creating a false medical record on  
18 patient 11932745 by falsifying vital signs recordings in the patient's chart as more particularly  
19 described in paragraphs 12 and 13, above.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Falsifying Patient Medical Record)**

22 15. Respondent is further subject to disciplinary action under Code sections  
23 3750(g) and 3750(k) in that she created a false medical record on patient 11932745 by falsifying  
24 vital signs recordings in the patient's chart, as more particularly described in paragraphs 12 and 13,  
25 above.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Use of Any Controlled Substance and/or Dangerous Drug)**

3 16. Respondent is further subject to disciplinary action under Code section  
4 3750.5(b), in that she used marijuana, a Schedule I controlled substance under Health and Safety  
5 Code section 11054(d)(13) and Lithium, a dangerous drug. The circumstances are as follows:

6 **April 11, 2006**

7 A. On or about April 11, 2006, Respondent was involved in a vehicle  
8 collision. She was the sole occupant in her vehicle and sitting in the driver's seat.  
9 Upon contact with Respondent, Huntington Beach Police Officer D. Wiederin  
10 observed several objective symptoms of intoxication: bloodshot/watery eyes, odor  
11 of alcoholic beverage, unsteady gait, and slurred speech. Respondent admitted to  
12 Officer Wiederin to consuming alcoholic beverages and Lithium. Officer Wiederin  
13 had to repeat simple directions to Respondent as she had great difficulty  
14 comprehending. Respondent was subsequently arrested for driving under the  
15 influence. A blood alcohol test was conducted on Respondent with a final blood  
16 alcohol result of 0.23% (an average of 2 determinations of 0.238 and 0.240).

17 **January 14, 2005**

18 B. On or about January 14, 2005, Respondent submitted a urine  
19 specimen for drug screening as a pre-employment requirement of Cross Country  
20 Trav Corps. Respondent's urine specimen tested positive for marijuana. The initial  
21 test level was 50 ng/ml with a confirmation level of 15 ng/ml. Respondent later  
22 claimed that she had unknowingly ingested brownies laced with marijuana while at  
23 a picnic.

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1 **AGGRAVATING CIRCUMSTANCES**

2 **(Previous Discipline)**

3 18. On or about November 30, 2001, the Board filed Accusation No. R-1611,  
4 against Respondent charging her with violating Code sections 490, 3750(d) and 3752 [conviction  
5 of a crime]; 3750 (g) [violation of provision]; 3750.5(b) [use of alcohol]; and 3750.5(c) [conviction  
6 of criminal offense involving alcohol].

7 18. In or about April 2002, the Board adopted a Stipulated Settlement and  
8 Disciplinary Order as its Decision to resolve the issues in Accusation No. R-1611. The Decision  
9 publicly reprimanded Respondent's license, and required her to refrain from violating any law and  
10 to pay the Board \$428.50 within one year of the effective date of the Decision. The Decision  
11 became effective May 26, 2002.

12 19. The circumstances of the filing of Accusation No. R-1611 are as follows:

13 A. On or about July 29, 2000, Respondent was arrested for  
14 driving under the influence of alcohol or drugs and for driving with more than  
15 0.08% of alcohol in her blood in violation of Vehicle Code sections 23152(a) and  
16 23152(b), respectively. On or about September 12, 2000, Respondent pled guilty  
17 and was convicted of violating Vehicle Code sections 23152(a) and 23152(b).

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
20 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

21 1. Revoking or suspending Respiratory Care Practitioner License No. 9731,  
22 issued to CHARLENE ANN CHARTIER.

23 2. Ordering Charlene Ann Chartier to pay the Respiratory Care Board the  
24 costs of the investigation and enforcement of this case, and if placed on probation, the costs of  
25 probation monitoring;

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3. Taking such other and further action as deemed necessary and proper.

DATED: June 13, 2005

Original signed by Liane Zimmerman for:  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant